

Part 8

Action by Members

48-3a-801 Direct action by member.

- (1) Subject to Subsection (2), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.
- (2) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

Enacted by Chapter 412, 2013 General Session

48-3a-802 Derivative action.

A member may maintain a derivative action to enforce a right of a limited liability company if:

- (1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the limited liability company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or
- (2) a demand under Subsection (1) would be futile.

Enacted by Chapter 412, 2013 General Session

48-3a-803 Proper plaintiff.

A derivative action to enforce a right of a limited liability company may be maintained only by a person that is a member at the time the action is commenced and:

- (1) was a member when the conduct giving rise to the action occurred; or
- (2) whose status as a member devolved on the person by operation of law or pursuant to the terms of the operating agreement from a person that was a member at the time of the conduct.

Enacted by Chapter 412, 2013 General Session

48-3a-804 Pleading.

In a derivative action, the complaint must state with particularity:

- (1) the date and content of plaintiff's demand and the response by the managers or other members to the demand; or
- (2) why the demand should be excused as futile.

Enacted by Chapter 412, 2013 General Session

48-3a-805 Special litigation committee.

- (1) If a limited liability company is named as or made a party in a derivative proceeding, the limited liability company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited liability company. If the limited liability company appoints a special litigation committee, on motion by the committee made in the name of the limited liability company, except for good

- cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This Subsection (1) does not prevent the court from:
- (a) enforcing a person's right to information under Section 48-3a-410; or
 - (b) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction upon a showing of good cause.
- (2) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be members.
- (3) A special litigation committee may be appointed:
- (a) in a member-managed limited liability company:
 - (i) by the consent of a majority of the members not named as parties in the proceeding; and
 - (ii) if all members are named as parties in the proceeding, by a majority of the members named as defendants; or
 - (b) in a manager-managed limited liability company:
 - (i) by a majority of the managers not named as parties in the proceeding; and
 - (ii) if all managers are named as parties in the proceeding, by a majority of the managers named as defendants.
- (4) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:
- (a) continue under the control of the plaintiff;
 - (b) continue under the control of the committee;
 - (c) be settled on terms approved by the committee; or
 - (d) be dismissed.
- (5) After making a determination under Subsection (4), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under Subsection (1) and allow the action to continue under the control of the plaintiff.

Enacted by Chapter 412, 2013 General Session

48-3a-806 Proceeds and expenses.

- (1) Except as otherwise provided in Subsection (2):
- (a) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and
 - (b) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the limited liability company.
- (2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.
- (3) A derivative action on behalf of a limited liability company may not be voluntarily dismissed or settled without the court's approval.

Enacted by Chapter 412, 2013 General Session

